

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 277 of 2015**

- Ku. Savita D/o Shri Ujjawal Singh Aged About 11 Years R/o Bathena Ward Dhamtari, Thana, Tahsil And Distt.- Dhamtari, Minor Through Natural Guardian Father Ujjawal Singh S/o Late Shri Balram Singh, Thana And Tahsil-Dhamtari Civil And Revenue Distt.- Dhamtari, Chhattisgarh.

----Appellant**Versus**

1. Tribhuwan Thakur S/o Shri Harishanker Thakur Aged About 50 Years R/o Parpanaka- Jagdalpur, Thana- Bodhghat, Civil And Revenue Distt.- Jagdalpur, Chhattisgarh.
2. Ramnath S/o Yamu Ishwer R/o Naya Munda Frejerpur, Jagdalpur, Thana- Jagdalpur, Civil And Revenue Distt.- Jagdalpur, Chhattisgarh, District : Bastar(Jagdalpur)
3. Divisional Manager New India Insurance Company Limited, Mobin Mahal Jail Road Raipur Tahsil And Distt.- Raipur, Chhattisgarh

---- Respondents

For Appellant	Shri Sumit Shrivastava
For Respondent No.3	Shri Qamrul Aziz, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****22.02.2019**

1. This is claimant's appeal seeking enhancement of compensation awarded by the Additional Motor Accidents Claims Tribunal, Dhamtari, District Dhamtari, C.G. (for short 'the Tribunal') in Claim Case No. 52/2014 vide award dated 02.02.2015.
2. As against the compensation of Rs.17,00,000/- claimed by the appellant/claimant by filing claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the grievous injuries sustained by her in the road accident on 18.03.2012, the Tribunal

awarded a total sum of Rs.2,40,000/- along with interest @ 6% per annum from the date of application till its actual payment, fastened the liability upon non-applicants jointly and severally.

3. The Tribunal, on a close scrutiny of the evidence led by the parties, held that the accident had occurred due to rash and negligent driving of offending Truck bearing registration No. CG17-DA-1072 by its driver i.e., respondent No.1 herein, offending vehicle was owned by respondent no.2 and insured with respondent no.3: appellant/claimant sustained grievous multiple injuries on right leg, elbow, ribs and other parts her body. As such, appellant suffered 80% permanent disability. At the time of accident, injured/claimant was about 10 years of age.
4. Learned counsel for the appellant submits that the appellant/injured was a student but learned Tribunal wrongly considered her income as Rs.15,000/- per annum on notional basis. He further submits that as per Doctor certificate Ex.P-13(C) the claimant suffered 80% permanent disability, on account of which her work as well as movement was restricted. Therefore, the appellant prays for enhancement of the compensation suitably. Further, the Tribunal has not granted any amount towards future prospect.
5. Counsel for the respondents opposed the arguments advanced by the appellant's counsel and stated that as per Doctor certificate permanent disability was not in respect of the whole body but it was in respect of a particular limb. Further, he submits that the Tribunal was also justified in assessing the income of the appellant as no evidence was adduced by the appellant in respect of his income. Thus, the amount awarded is strictly in accordance with law and needs no interference by this Court.
6. Heard learned counsel for the parties and perused the material available on record.

7. As regards income of the deceased as per pleadings of the claimant and the evidence adduced by her at the time of accident she was a student and her age was 10 years as is evident from the disability certificate issued by the District Medical Board, Dhamtari, therefore, considering the facts and circumstances of the case, the fact that the accident occurred on 18.03.2012, the minimum wages at the relevant time, the income of the injured can safely be taken as Rs.4,500/- per month.
8. So far as functional disability at the rate of 80% assessed by the Tribunal is concerned, considering the facts and circumstances of the case, the disability certificate Ex.P-13(C) according to which the claimant suffered 80% permanent disability due to amputation of right leg below the thigh and her age, the Tribunal was justified in assessing the functional disability of the claimant as 80%. However, the Tribunal was not justified in ignoring the grant of future prospect to the claimant which in the present case comes to 40% of her annual income, in view of decision of Hon'ble Supreme Court in **National Insurance Co. Ltd Versus Pranay Sethi** reported in **(2017) 16 SCC 680** Therefore, in view of the decision of Hon'ble Supreme Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121 & Pranay Sethi** (supra), the compensation is reassessed as under:-

S.No	Head	Calculation
1.	Notional Income of the claimant	Rs. 4500/- i.e. Rs.54,000/- per annum.
2.	Future prospect 40%	Rs. 21,600/- Rs.54,000 + Rs.21,600 = Rs.75,600/-

3.	Loss of earning capacity @ 80%	Rs.60,480/-
4.	Multiplier of 15 applied	Rs.9,07,200/-
5.	For pain and suffering	Rs. 25,000/-
6.	For medical expenses	Rs.30,000/-
7.	For special diet	Rs.10,000/-
8.	For transport	Rs.5,000/-
9.	Towards loss of Marital Prospect	Rs. 1,00,000/-
Total Compensation		Rs.10,77,200/-

9. In the result, the appeal is allowed in part. Since, the Tribunal has already awarded Rs.2,40,000/-, after deducting the same the claimant is held entitled for an additional compensation of Rs.8,37,200/-. The amount awarded by the Tribunal as well as the enhanced amount shall carry interest at the rate of 6% from the date of application till its realization.

9. No order as to costs.

Sd/-
Gautam Chourdiya
Judge